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August 20, 2012

Mr. Bruce H. Palin
Assistant Commissioner, Office of Land Quality
Indiana Department of Environmental Management
100 N. Senate Avenue
Indianapolis, IN 46204

RE: ArcelorMittal Burns Harbor Settlement Agreement

Dear Mr. Palin,

On behalf of the Hoosier Environmental Council (HEC), I am responding to your letter dated August 10, 2012 to HEC's Executive Director, Jesse Kharbanda, as well as the concerns that you raise in your Letter to the Editor to The Indianapolis Star on August 13, 2012.

We at HEC have long demonstrated a commitment to transparency, professionalism, integrity and accuracy in everything that we do. Our communications on the settlement reached with ArcelorMittal Burns Harbor (AMBH) and IDEM are no exception.

1. HEC gave the entirety of key legal documents to The Star during the reporting process.

To ensure that Star reporter Ryan Saballow had all the facts, on July 24, 2012, I provided him with a copy of our Petition for Administrative Review, the Settlement Agreement which includes a copy of IDEM's Agreed Order, IDEM's inspection reports from February and November of 2008 and April 2010, the Waste Characterization/Classification of relevant waste streams dated January 25, 2010, and EPA's 1999 RCRA Facility Investigation Summary Report. Those documents are public records that, along with my knowledge of events in representing Save the Dunes, support each and every statement I made to the press and that HEC made in its communications to its supporters. Those documents were also independently interpreted by Mr. Saballow in writing his news story published in The Indianapolis Star. Moreover, I understand that Mr. Saballow reviewed the many investigative articles from 2009 and 2010 written by reporter Gitte Laasby with The Post-Tribune of NW Indiana. Based on my many conversations with Ms. Laasby during that time, I know that her articles were also based on her review of voluminous public records obtained from IDEM and EPA. Considering the transparency with which HEC gave all relevant documents to Mr. Saballow and left it to Saballow's own judgement to interpret that information, it is not appropriate to say that HEC misrepresented the facts.

2. It is a fact that the non-SWWTP open dumping was only addressed by IDEM because of the investigative journalism that I facilitated and the permit challenge that I filed.

I stand by my statement that IDEM would not have initiated formal enforcement against AMBH to address the open dumped waste piles at the site but for my involvement in bringing this issue to the Post Tribune's attention and the HEC/Save the Dunes' permit appeal filed on July 19, 2010. Specifically, IDEM's 2008 inspection reports reference only AMBH's continued improper disposal of secondary wastewater treatment plant (SWWTP) sludge -- "three truck loads a day, five days per week" -- without any mention of the other open dumped waste piles that were known by IDEM to exist. And, as stated in both inspection reports, instead of addressing the ongoing SWWTP sludge dumping through enforcement proceedings, IDEM decided to address this continuing violation "through the permitting process." Thereafter, IDEM allowed AMBH to submit a draft permit application which, for over a year, effectively side-stepped the required public notice and comment period that would have been triggered had AMBH submitted a formal and final permit application.

During that time, my efforts exposed the non-SWWTP waste piles (i.e. 873,000 tons of blast furnace filter cake sludge sitting next to the Indiana Harbor, 80,000 tons of refractory brick, slag, scrap steel, cans, drums, plastic buckets, plastic sheeting, wood pallets and cardboard dumped within feet of Lake Michigan, and other waste piles containing RSB final thickener sludges, roll shop grinding sludges, basic oxygen furnace filter sludges, burnt lime, coal coke sand, coke oven dust, ladle brick, basic oxygen furnace cleanup material, and subcar brick piles) to the media -- waste piles that, ultimately, were not in any way addressed by the landfill permit despite IDEM's continued assertion that the open dumping would be addressed through that permit. Indeed, as late as July of 2010, just before we filed our permit appeal, IDEM continued to maintain that AMBH's continued open dumping would not be enforced but, rather, would be resolved by the company's plans to build a landfill. Specifically, the following is a direct quote from IDEM in response to public comments on the issue:¹

[Public] Comment: ArcelorMittal has been allowed to open dump in violation of RCRA since at least 1999 (10 years), this is a cause for concern and an enforceable action.

[IDEM] Response: ArcelorMittal is proposing to resolve the concerns with what they consider to be long-term storage of waste streams they intend to recycle by placing them in the proposed landfill (storage facility).

It was only after HEC filed a permit appeal on July 19, 2010 that negotiations began with AMBH to address improperly disposed of wastes other than the SWWTP sludge piles.

¹ See Commissioner's Notice of Decision (July 6, 2010) and attached responses to public comments.

3. The open dumping along Lake Michigan does in fact pose threats to the Lake and Dunes.

We at HEC do not share your view that the millions of tons of open dumped wastes long sitting without controls within feet of Lake Michigan and the Indiana Dunes National Lakeshore do not pose a significant environmental and public health threat. As you are well aware, simply because those wastes are not subject to federal regulation due to their characterization as legally "non-hazardous," does not mean that those wastes are not toxic and harmful. Indeed, IDEM's own Waste Characterization Report of January 25, 2010 reveals that much of the waste meets restricted waste Type I criteria (the most toxic waste short of a hazardous waste) for lead and cadmium, and Type II and III for lead, cadmium, chromium, selenium, arsenic, and barium. Also, contrary to your assertion, our communications never said or implied that these wastes were "about to be disposed of directly into Lake Michigan." We simply stated the obvious truth that finally having controls placed on the waste piles pending their disposal in the landfill will prevent them from further traveling with the wind and surface water into Lake Michigan and the Indiana Dunes National Lakeshore.

4. HEC does maintain that there are communities that we are serving that do not feel properly served by IDEM.

While you may not agree with my view that "I sometimes feel like I'm doing IDEM's job," I formed that view based not only on events that led up to and necessitated our permit challenge in the ArcelorMittal matter (some of which I did not share with the press to avoid needless controversy with your agency) but also based on the many other legal proceedings I have filed on behalf of suffering communities who have turned to IDEM for help to no meaningful avail. As a government agency, IDEM should expect public criticism and, the statement I made was not personally directed at you or any other IDEM staff member. Accordingly, I stand by my statement and do not apologize for it.

To conclude, we at HEC certainly want to maintain open lines of communication with IDEM as long as doing so does not require us to compromise the truth or adopt IDEM's preferred public talking points on a particular issue. I hope that this letter clarifies the basis of our communications on this matter and that you will reconsider your accusation that we have in anyway misrepresented the facts.

Sincerely,

Kim E. Ferraro
Staff Attorney
Hoosier Environmental Council

cc: Tom Easterly, Kent Abernathy